



DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 221129-0253]**

**RIN 0648-BL83**

**Fisheries of the Northeastern United States; 2023 Summer Flounder, Scup, and Black Sea Bass Specifications**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes 2023 specifications for the summer flounder, scup, and black sea fisheries. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan require us to publish specifications for the upcoming fishing year for each of these species and to provide an opportunity for public comment. The proposed specifications are intended to establish allowable harvest levels for these species that will prevent overfishing, consistent with the most recent scientific information. This rule also proposes to make a change to the regulations to facilitate states' participation in a Wave 1 (January – February) recreational black sea bass fishery.

**DATES:** Comments must be received on or before [*insert date 15 calendar days after the date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2022-0112, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0112 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

A Supplemental Information Report (SIR) was prepared for the 2023 summer flounder, scup, and black sea bass specifications and a Categorical Exclusion (CE) was prepared for the administrative change for the Wave 1 black sea bass fishery. Copies of the SIR and CE are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901.

**FOR FURTHER INFORMATION CONTACT:** Laura Hansen, Fishery Management Specialist, (978) 281-9225.

#### **SUPPLEMENTARY INFORMATION:**

##### **General Background**

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage the summer flounder, scup, and black sea bass fisheries. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) outlines the Council’s process for establishing specifications. The FMP requires NMFS to set an acceptable biological catch (ABC), annual catch limit (ACL), annual catch targets (ACT), commercial quotas, recreational harvest limits (RHL), and other management measures, for 1 to 3 years at a time. In December 2021, the Council and Board adopted revised quota allocations for these three species to the commercial

and recreational sectors of the fisheries as part of the Commercial-Recreational Allocation Amendment (Amendment 22). NMFS approved Amendment 22 on November 7, 2022. This action would set the ABC, as well as the recreational and commercial ACL, ACT, commercial quotas, and RHL for all three species, for 2023, consistent with the recommendations made by the Commission’s Summer Flounder, Scup, and Black Sea Bass Board and Council at their joint August 2022 meeting. This rule also proposes to make a change to the regulations to facilitate states’ participation in a Wave 1 recreational black sea bass fishery.

### **Proposed 2023 Specifications**

Proposed specifications for summer flounder, scup, and black sea bass are outlined in Table 1.

**Table 1 -- Proposed 2023 summer flounder, scup, and black sea bass specifications(million lb/metric tons (mt)).**

	<b>Summer Flounder</b>	<b>Scup</b>	<b>Black Sea Bass</b>
<b>Overfishing Limit (OFL)</b>	34.98 lb (15,867 mt)	30.09 lb (13,649 mt)	17.01 lb (7,716 mt)
<b>Acceptable Biological Catch (ABC)</b>	33.12 lb (15,023 mt)	29.67 lb (13,458 mt)	16.66 lb (7,557 mt)
<b>Commercial ACL = Commercial Annual Catch Target (ACT)</b>	18.21 lb (8,260 mt)	19.29 lb (8,750 mt)	7.50 lb (3,402 mt)
<b>Commercial Quota</b>	15.27 lb (6,926 mt)	14.01 lb (6,355 mt)	4.80 lb (2,177 mt)
<b>Recreational ACL = Recreational ACT</b>	14.90 lb (6,759 mt)	10.39 lb (4,713 mt)	9.16 lb (4,155 mt)
<b>Recreational Harvest Limit</b>	10.62 lb (4,817 mt)	9.27 lb (4,205 mt)	6.57 lb (2,980 mt)

#### *Summer Flounder*

The Council and Board approved a revised summer flounder commercial quota of 15.27 million lb (6,926 mt) and a revised RHL of 10.62 million lb (4,817 mt) for 2023. These specifications reflect the summer flounder allocations resulting from Amendment 22, which allocates 55 percent of the ABC to the commercial sector and 45 percent to the recreational sector beginning in 2023.

This action also sets the initial and recently modified summer flounder state-by-state quotas. NMFS will announce any adjustments needed to account for any previous overages in the final rule, prior to the start of the 2023 fishing year.

**Table 2 -- Initial 2023 Summer Flounder State-by-State Quotas**

<b>State</b>	<b>Initial Quota (lb)</b>	<b>Initial Quota (mt)</b>
<b>ME</b>	23,598	11
<b>NH</b>	19,100	9
<b>MA</b>	1,358,834	616
<b>RI</b>	2,205,205	1,000
<b>CT</b>	923,031	419
<b>NY</b>	1,437,768	652
<b>NJ</b>	2,304,717	1,045
<b>DE</b>	20,755	9
<b>MD</b>	902,214	409
<b>VA</b>	2,743,231	1,244
<b>NC</b>	3,328,558	1,510
<b>Total</b>	1,5267,012	6,925

This action makes no changes to the current commercial management measures, including the minimum fish size (14-inch (36-cm) total length), gear requirements, and possession limits. Recreational management measures for 2023 will be decided on and finalized later this year through a separate rulemaking.

#### *Scup*

The Council and Board approved a revised scup commercial quota of 14.01 million lb (6,355 mt) and a revised RHL of 9.27 million lb (4,205 mt) for 2023 (Table 1).

These revisions reflect the scup allocations resulting from Amendment 22, which allocates 65 percent of the ABC to the commercial sector and 35 percent to the recreational sector beginning in 2023.

The commercial scup quota is divided into three commercial fishery quota periods, as outlined in Table 3.

**Table 3 -- Commercial Scup Quota Allocations for 2023 by Quota Period**

<b>Quota Period</b>	<b>Percent Share</b>	<b>lb</b>	<b>mt</b>
Winter I	45.11	6,319,911	2,867
Summer	38.95	5,456,895	2,475
Winter II	15.94	2,233,194	1,013
Total	100	14,010,000	6,355

The current quota period possession limits are not changed by this action, and are outlined in Table 4.

**Table 4 -- Commercial Scup Possession Limits by Quota Period**

<b>Quota Period</b>	<b>Percent Share</b>	<b>Federal Possession Limits (Per Trip)</b>	
		<b>lb</b>	<b>kg</b>
Winter I	45.11	50,000	22,680
Summer	38.95	N/A	N/A
Winter II	15.94	12,000	5,443
Total	100.0	N/A	N/A

The Winter I possession limit will drop to 1,000 lb (454 kg) when 80 percent of that period's allocation is landed. If the Winter I quota is not fully harvested, the remaining quota is transferred to Winter II. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notice in the **Federal Register**. The regulations at 50 CFR 648.122(d) specify that the Winter II possession limit increases consistent with the increase in the quota, as described in Table 5.

**Table 5 -- Potential Increase in Winter II Possession Limits based on the Amount of**

## Unused Scup Rolled over from Winter I to Winter II

Initial Winter II Possession Limit		Rollover from Winter I to Winter II		Increase in Initial Winter II Possession Limit		Final Winter II Possession Limit after Rollover from Winter I to Winter II	
lb	kg	lb	kg	lb	kg	lb	kg
12,000	5,443	0-499,999	0-226,796	0	0	12,000	5,443
12,000	5,443	500,000-999,999	226,796-453,592	1,500	680	13,500	6,123
12,000	5,443	1,000,000-1,499,999	453,592-680,388	3,000	1,361	15,000	6,804
12,000	5,443	1,500,000-1,999,999	680,389-907,184	4,500	2,041	16,500	7,484
12,000	5,443	2,000,000-2,500,000*	907,185-1,133,981	6,000	2,722	18,000	8,165

\*This process of increasing the possession limit in 1,500 lb (680 kg) increments would continue past 2,500,000 lb (1,122,981 kg), but we end here for the purpose of this example.

This action proposes no changes to the 2023 commercial management measures for scup, including the minimum fish size (9-inch (22.9-cm) total length), gear requirements, and quota period possession limits. As with summer flounder and black sea bass, potential changes to the recreational measures (bag limits, size limits, and seasons) for 2023 will be considered later this year.

### *Black Sea Bass*

The Council and Board approved a revised black sea bass commercial quota of 4.80 million lb (2,177 mt) and a revised RHL of 6.57 million lb (2,980 mt) for 2023. As with the other species, these specifications reflect the black sea bass allocations resulting from Amendment 22, which allocates 45 percent of the ABC to the commercial sector and 55 percent to the recreational sector beginning in 2023. The revised RHL also incorporates a change in the recreational discards projection method. The Council and Board considered input from the Monitoring Committee on two potential methods for projecting recreational dead discards and, ultimately, agreed to use an average of the two approaches (2.59 million lb (1,175 mt)). The first method would set projected 2023

recreational dead discards to the most recent three-year average (i.e., 3.04 million lb (1,379 mt)). The second method is the same used to project recreational discards for 2021 and 2022 and this method relies on a proportional average of 2.14 million lb (989 mt). The first method does not rely on an assumption that catch will be equal to the ACL and results in a higher estimate than the second method. The Council and Board agreed that it is very challenging to predict future dead discards, especially given that recent dead discards are not currently available by weight, but by numbers of fish. To generate discard estimates, an ad hoc approach was used that applies the mean weight of a discarded fish from 2019 to the number of dead discards. The 2020 and 2021 estimated discards were 3,476,690 lb (1,577 mt) and 4,195,397 lb (1,903 mt) respectively. The Council and Board also agreed that discards in 2023 could fall between the estimates generated by the two approaches; therefore, they decided to use an average of these two approaches. While the average approach appears reasonable, given the uncertainty in estimating discards and because this average approach is different than previously used or considered, we are specifically seeking comment on the merits of and the rationale for the average approach. The proposed 2023 black sea bass specifications are outlined in Table 6.

**Table 6 -- Proposed Black Sea Bass Specifications**

<b>Proposed 2023 Specifications</b>	<b>million lb</b>	<b>mt</b>
<b>OFL</b>	17.01	7,716
<b>ABC</b>	16.66	7,557
<b>Commercial ACL= ACT</b>	7.50	3,401
<b>Projected commercial dead discards</b>	2.70	1,224
<b>Commercial quota</b>	4.80	2,177
<b>Recreational ACL=ACT</b>	9.16	4,156
<b>Projected recreational dead discards</b>	2.59	1,175
<b>RHL</b>	6.57	2,981

*Black Sea Bass February Wave 1 Fishery*

The Council and Board also agreed to modify the process for the optional black

sea bass February recreational opening to specify that vessels landing black sea bass in a state with an approved Wave 1 recreational fishery are subject to the state regulations during that Wave 1 fishery. Under the current process, states participating in the optional February opening are required to match the Federal waters measures. The Council and Board made this change to address challenges with the process used to waive Federal waters recreational black sea bass measures starting with 2022.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Mid-Atlantic Fishery Management Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with a SIR. The proposed action would set the 2023 catch and landings limits for summer flounder, scup, and black sea bass based on the recommendations of the SSC, the Council, and Board.

Vessel ownership data<sup>1</sup> were used to identify all individuals who own fishing

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<sup>1</sup> Affiliate data for 2019-2021 were provided by the NMFS NEFSC Social Science Branch. This is the latest affiliate data set available for analysis.



vessels. Vessels were then grouped according to common owners. The resulting groupings were then treated as entities, or affiliates, for purposes of identifying small and large businesses that may be affected by this action.

Commercial and recreational for-hire affiliates potentially regulated by this action include all those with valid commercial fishery permits for summer flounder, scup and black sea bass and any for-hire affiliates that reported landing summer flounder, scup or black sea bass in any year between 2019-2021. A total of 1,072 affiliates were identified as being potentially regulated by this action, 1,066 (99 percent) of which were identified as small businesses and 6 (1 percent) of which were identified as large businesses, based on their average revenues in 2019-2021.

Of the 1,072 potentially regulated affiliates, 302 reported that the majority of their revenues in 2021 came from for-hire fishing. Some of these affiliates may have also participated in commercial fishing. All 302 of the for-hire affiliates were categorized as small businesses based on their average 2019-2021 revenues. It is not possible to determine what proportion of their revenues came from fishing for an individual species. Nevertheless, given the popularity of summer flounder, scup, and black sea bass as recreational species, revenues generated from these species are likely important for many of these affiliates at certain times of the year.

For-hire revenues are impacted by a variety of factors, including regulations and demand for for-hire trips for summer flounder, scup, black sea bass, and other potential target species; weather; the economy; and other factors. Recreational measures to achieve future RHLs are not yet known, as they are generally considered late in the year for the upcoming year.

It is difficult to predict how recreational effort and harvest may change in 2023 due to the pending implementation of the Recreational Harvest Control Rule Framework/Addenda, which utilizes a new method to set recreational measures, called

the Percent Change Approach. Under the Percent Change Approach, the RHL will factor into the calculation of how measures may need to change, but is only one piece of a new, multi-step process. Measures will not be tied as closely to the RHL as were previously required. Depending on the appropriate percent change in harvest determined by this process later in 2022, recreational measures in 2023 could be unchanged, restricted, or further liberalized from 2022 measures. If restrictions are implemented, given the popularity of these species in this region, this could result in a decrease in for-hire trips, decreased for-hire revenues, and overall slight to moderate negative impacts to recreational for-hire businesses, depending on the scale of the restrictions. If measures are liberalized, this could result in an increase in for-hire trips, increased for-hire revenues, and moderate positive impacts to recreational for-hire businesses. These impacts would be greater in magnitude for the for-hire businesses that depend more heavily on summer flounder, scup or black sea bass. However, as previously stated, it is not possible to determine the relative importance of these species compared to other species for the potentially regulated for-hire affiliates. The administrative change to facilitate the Wave 1 recreational black sea bass fishery will provide participating states greater flexibility in developing measures to fit the unique needs of their fisheries, rather than the one-size-fits all approach under the current process. This is expected to have slight positive economic impacts in states that participate in this opening. It is not expected to impact states that do not participate in this opening.

This action is not expected to adversely impact revenues for commercial and recreational vessels that fish for summer flounder, scup, and black sea bass. Because this rule will not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: November 30, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

**PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In §648.145, revise paragraph (a) to read as follows:

**§ 648.145 Black sea bass possession limit.**

(a) During the recreational fishing season specified at § 648.146, no person shall possess more than 5 black sea bass in, or harvested from, the EEZ per trip unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit, unless otherwise specified in the conservation equivalent measures described in § 648.151. Vessels landing black sea bass in a state with an approved Wave 1 recreational fishery are subject to the state regulations regarding possession limit during that Wave 1 fishery. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit may not retain more than 5 black sea bass during the recreational fishing season specified at § 648.146. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members

for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.142. However, possession of black sea bass harvested from state waters above this possession limit is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.150 and abide by state regulations.

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3. Revise §648.146 to read as follows:

**§ 648.146 Black sea bass recreational fishing season.**

Vessels that are not eligible for a black sea bass moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from May 15 through October 8, unless otherwise specified in the conservation equivalent measures described in § 648.151 or unless this time period is adjusted pursuant to the procedures in § 648.142. However, possession of black sea bass harvested from state waters outside of this season is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151 and abide by state regulations. Vessels landing black sea bass in a state with an approved Wave 1 recreational fishery are subject to the state regulations regarding fishing season during that Wave 1 fishery.

4. In §648.147, revise paragraph (b) to read as follows:

**§ 648.147 Black sea bass size requirements.**

\* \* \* \* \*

(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum fish size for black sea bass is 14 inches (35.56 cm) total length for all vessels that do not qualify for a black sea bass moratorium permit, and for party boats holding a black sea bass moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a black sea bass

moratorium permit, if fishing with more than three crew members, unless otherwise specified in the conservation equivalent measures as described in § 648.151.

However, possession of smaller black sea bass harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151 and abide by state regulations. Vessels landing black sea bass in a state with an approved Wave 1 recreational fishery are subject to the state regulations regarding size requirements during that Wave 1 fishery.

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